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Panel on Transport and Panel on Financial Affairs

**Joint Subcommittee on Issues Relating to Insurance Coverage
for the Transport Sector**

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information and summarizes past discussions by the Panel on Transport and Panel on Financial Affairs ("the Panels") on issues relating to the difficulties encountered by the transport sector in obtaining insurance coverage.

Background

2. According to section 4 of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272), it shall not be lawful for any person to use, or to permit any other person to use, a motor vehicle on a road unless the vehicle concerned is covered by valid third party risks insurance. Offenders shall be liable to a fine of \$10,000 and to imprisonment for 12 months on conviction.

3. A joint meeting of the Panels was held on 28 February 2011 to discuss with deputations and the Administration issues relating to the difficulties encountered by the transport sector in obtaining insurance coverage. A total of 27 deputations from the transport and insurance sectors attended the meeting. During the discussion, members and deputations pointed out that the difficulties encountered by the transport sector in obtaining insurance coverage were attributable to a number of factors and might involve policy, legal, operational as well as enforcement issues. A summary of the views and concerns expressed by Panel members and the deputations is in **Appendix I**. In order to follow up the relevant issues in a comprehensive and focused

manner, members of the Panels agreed at another joint meeting on 18 March 2011 that a joint subcommittee should be formed under the Panels to study the matter.

The Administration's response to the views of deputations

4. At the joint meeting on 28 February 2011, the Transport Department noted the suggestion of allowing vehicle inspection to be conducted either in Hong Kong or in the Mainland instead of in both places. The Office of the Commissioner of Insurance ("OCI") indicated that it was aware of the difficulties encountered by the transport sector in obtaining insurance coverage, such as rising premiums and refusal by some insurance companies to underwrite insurance, and would relay the matter to the relevant authorities.

5. OCI also explained its role to monitor the financial position of insurance companies and to oversee the compliance of insurance companies with the requirements stipulated in the Insurance Companies Ordinance (Cap. 41). OCI did not have the authority to interfere with the business operation nor the premiums charged by individual insurance companies. Nevertheless, OCI would not tolerate the malpractices of the insurance sector, and the transport sector could relay their concerns in this regard to OCI for appropriate follow-up actions.

6. Regarding the difficulties faced by the taxi and public light bus trades in obtaining insurance coverage, OCI remarked that the situation was improving and OCI would provide assistance where necessary. The number of complaints received by OCI from the taxi and public light bus trades involving difficulties in obtaining insurance coverage remained low and all such cases had been resolved. Although OCI would not interfere with the business operation of insurance companies, it would ensure that they followed the "Code of Conduct for Insurance Companies".

7. On the issues of drink/drug driving and reconciliation agreement, OCI stated that they were under the purview of the Hong Kong Federation of Insurance Companies. As regards the concerns of the cross-border transport trades, OCI pointed out that merging the insurance policies taken out in Hong Kong and the Mainland into one insurance policy might not be feasible because the insurance legislation in Hong Kong and the Mainland were different, and there was no arrangement for mutual recognition of insurance policies between Hong Kong insurance companies and Mainland insurance companies.

Relevant papers

8. A list of the relevant papers on the Legislative Council website is in **Appendix II**.

Council Business Division 2
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Summary of views and concerns expressed by members and deputations at the joint meeting of the Panel on Transport and Panel on Financial Affairs on 28 February 2011

1. Views of the transport sector

(a) Continuous rise in insurance premium

The continuous rise in premium and prepayment/deposit (i.e. commonly known as "insurance excess" in the transport sector) of third party risks insurance for taxis and public light buses (PLBs) made it difficult for many vehicle owners to take out and renew their insurance policies. The transport sector considered that the premium rise was attributed to monopoly by a few insurers engaging in motor vehicle insurance business in the market, and the payment of huge compensation in claims which involved illegal acts, such as organized frauds to deceive claims and champerty. The sector was of the view that rampant activities of the recovery agents led to rise in fraudulent claims.

(b) Vehicle owners held liable even not at fault

The sector pointed out that in the event of traffic accidents, insurers would deduct the no claim discount (NCD) enjoyed by vehicle owners and would increase the insurance premium even if they were subsequently found not at fault. This arrangement was unfair to vehicle owners.

(c) Refusal of insurers to process claim applications

Some taxi and PLB drivers might sign a reconciliation agreement with the third party involved in the accident after a traffic accident. In some cases, the third party filed a claim against the owner of the taxi or PLB involved in the accident after the deadline for filing a claim. The insurers often refused to process claim applications or accept the reconciliation agreement.

(d) Problems in relation to the operation of insurers

The sector considered that despite the increased premium, the insurers did not provide comprehensive service. For example, in drink/drug driving accidents, the behaviour of the drivers involved was beyond the control of vehicle owners. However, the insurers would not make compensation in these cases. Representatives from the trades also highlighted some problems in relation to the operation of insurers, which included: (i) lack of clear guidelines in respect of certain circumstances, such as whether vehicles running on the roads were covered when typhoon signal No. 8 was hoisted; and (ii) it was difficult for vehicle owners less proficient in English to understand the provisions in the motor vehicle insurance policies as only English copies were available.

(e) Cross-border transportation

Cross-border transportation operators pointed out that they must conduct annual examinations and take out relevant insurance for their vehicles in Hong Kong and the Mainland separately before they were permitted to operate. When a cross-border vehicle was involved in an accident in the Mainland, most of the injured persons (including their family members) would choose to return to Hong Kong immediately for medical treatment and would often file upon recovery their claims according to the legal procedures of Hong Kong. As such claims were made in Hong Kong, the insurers in the Mainland might refuse to process the claims or make any compensation. On the other hand, the insurers in Hong Kong might also refuse to compensate as the accidents occurred in the Mainland. As a result, the operators of the vehicles concerned were unable to obtain any insurance coverage. Therefore, the sector suggested that the Government should assist the trades to take out insurance which could provide comprehensive coverage against accidents in both Hong Kong and the Mainland.

(f) Expectation on the Government

The sector considered that the Office of the Commissioner of Insurance (OCI), which was not provided with de facto power, could only relay the problems raised by the transport sector in relation to insurance coverage to the relevant departments. It could not address the problems itself. The sector also expected the relevant

government bureaux/departments to work together to step up measures against illegal activities, such as fraudulent claims and champerty.

(g) Loopholes in the existing system

The sector considered that there were loopholes in the Traffic Accident Victims Assistance Scheme as the drivers and passengers in minor traffic accidents could be granted assistance easily by just claiming that they were injured, and they were not required to take up any responsibilities.

2. Views of the insurance sector

(a) Keen competition among the insurers

The insurance sector understood the difficulties faced by the transport sector, but pointed out that there were at least 12 insurers providing insurance coverage for taxis and/or PLBs in the market. Moreover, keen competition existed among vehicle insurers, and those which engaged in taxi and PLB insurance business continued to incur losses. This was why only a few insurers engaged in the business.

(b) Exaggeration of claims

The insurance sector was of the view that increased illegal activities in the community, such as fraudulent claims and champerty, were the main cause leading to losses of insurers. Since it was easy for people to seek approval from the Legal Aid Department for legal aid service, illegal activities might have been indirectly encouraged. The sector also considered that it was easy for people in minor accidents to obtain sick leave certificates from doctors, and that actions should be taken to combat illegal activities, such as fraudulent claims, champerty and exaggeration of injuries, in order to address the problems.

(c) No Claim Discount

Regarding the issue on NCD, the insurance sector pointed out that seven major insurers engaging in taxi and PLB insurance business adopted the "Market Understanding on Reinstating No Claim Discount for Taxi and Public Light Bus" in 2010, which clearly set

out the circumstances under which NCD would be reinstated for taxis and PLBs.

3. Views of members

(a) Difficulties encountered by the transport sector on insurance matters

Members noted the following reasons for the transport sector to encounter difficulties in obtaining insurance coverage: (i) the insufficient number of insurers engaging in the business in the market might have caused the premium to escalate despite the reduced number of traffic accidents; and (ii) exaggeration of injuries to make fraudulent claims and the prevalence of champerty might have caused the insurers having to pay huge compensation and increase the premium.

(b) Government intervention in the taxi/PLB insurance market

Some members considered that while the transport trades were required statutorily to take out third party risks insurance, it seemed that no government bureaux/departments could help them address the problem related to the difficulties in obtaining insurance coverage. This was unfair to the transport sector.

Some members were of their view that certain issues (for example, refusal to accept the reconciliation agreement and lack of clear guidelines in respect of the coverage under certain circumstances, such as those when typhoon signal No. 8 was hoisted) could not be addressed by the Hong Kong Federation of Insurers alone. Moreover, as these issues were related to various government bureaux/departments, they suggested that the Government should intervene and address the issues at bureau level, and consider giving the relevant authorities (such as OCI and the Transport Department) more power.

(c) Problems of the existing system

Some members were concerned that the existing system in Hong Kong encouraged people to make claims, and this might cause the insurers to suffer losses. The insurance sector was unable to draw up clear guidelines because the legislation was ambiguous.

(d) Enforcement actions taken by the Administration

In some members' view, the difficulties encountered by the transport sector in obtaining insurance coverage were caused by structural problems. The way to resolve this problem was to punish "the principal offenders". The Hong Kong Police Force should be responsible for this. Moreover, some members considered that the Government should review whether individual departments had been ineffective in taking enforcement actions, and whether there was a need to amend the relevant legislation.

(e) Attendance of public officers at meeting

Members considered that certain relevant issues (including cross-border transportation) involved policy considerations, and the officials of the bureaux concerned should attend the meetings in future. Moreover, as fraudulence in claims was one of the major causes leading to the problem faced by the transport sector, representatives of the Hong Kong Police Force, Department of Justice and Hospital Authority should attend such meetings.

(f) Provision of insurance products to the transport sector

Some members suggested that the Government should consider providing related insurance products to the owners of taxis and PLBs.

**Relevant papers on issues relating to insurance coverage
for the transport sector**

Meeting	Date of meeting	Paper
Panel on Financial Affairs	16.1.2003 (Item I)	Agenda Minutes CB(1)707/02-03(02)
	15.3.2003 (Item I)	Agenda Minutes CB(1)1112/02-03(01)
	22.3.2003 (Item I)	Agenda Minutes CB(1)1112/02-03(01)
Panel on Financial Affairs and Panel on Manpower	19.6.2003 (Item II)	Agenda Minutes CB(1)1742/02-03(01) CB(1)1904/02-03(01)
Panel on Transport and Panel on Financial Affairs	28.2.2011 (Item II)	Agenda Minutes CB(1)1377/10-11(01) CB(1)1377/10-11(02) CB(1)1385/10-11(01)
	18.3.2011 (Item II)	Agenda Minutes CB(1)1614/10-11(01)
Legislative Council	20.5.2009	[Question 14] Asked by: Hon Miriam LAU Commercial vehicle insurance provided by insurance companies

Meeting	Date of meeting	Paper
Legislative Council	27.1.2010	[Question 14] Asked by: Hon Miriam LAU Regulating activities of recovery agents
	2.6.2010	[Question 5] Asked by: Hon CHEUNG Hok-ming Third party risks insurance for taxis

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